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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 436 of 1999
in
SPECIAL CIVIL APPLICATION No 8282 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KRUSHNAKUMAR M CHOUDHARY
Versus
MUNICIPAL COMMISSIONER

Appearance:
1. LETTERS PATENT APPEAL No. 436 of 1999
MR CP JADHAV for Appellant No. (absent)
MR RM CHHAYA for Respondent No. 1 (absent)
MR HD DVAE AGP for Respondent No. 1,2
RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 02/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. This is an appeal of 1999, which is listed at Sr. No.47 in our running final hearing board dated 23.11.2004. When it was called out at about 12.40 p.m. learned counsel for the appellant, Mr.C.P.Jadhav and learned counsel Mr.Chhaya for respondent No.1-Ahmedabad Municipal Corporation were not present. However, Mr.Dave, learned AGP for respondent No.2-State of Gujarat is present.

#. In absence of the learned counsel for the parties, ordinarily, matters are not decided on merits and at the most they can be dismissed for default. However, dismissing the matters for default would be an exercise in futility as almost invariably matters are restored on the applications filed for restoration.

#. In absence of the learned counsel for the appellant and mainly contesting respondent No.1-Ahmedabad Municipal Corporation, we have carefully gone through the judgment and order passed by the learned Single Judge dismissing the writ petition i.e. Special Civil Application No.8282/98 filed by the appellant-Petitioner and with due assistance of learned AGP, Mr.Dave, we decide this appeal today.

#. The appellant-petitioner was serving as Survey Boy with the respondent No.1-Corporation since 1990. In pursuance of the circular No.88 dated 18.3.1996 he applied for the post of Mukadam. He was called for interview, but not selected as he failed to secure minimum 50 marks at the time of interview. Therefore, he challenged the selection list by way of writ petition i.e. Special Civil Application No.8282/98 without impleading the successful candidates whose names were included in the select list by the respondent-Corporation.

#. Learned Single Judge (Coram : Miss.R.M.Doshit, J.) dismissed the writ petition of the appellant-petitioner mainly on two grounds; (i) that the petitioner failed to join selected candidates of the select list in the writ petition, who are going to be adversely affected, in case the petition was allowed; and (ii) the petitioner failed to pass the selection test as he has secured less than 50 marks at the time of interview.

#. It appears from the judgment and order of the learned Single Judge that only submission made on merits by the learned counsel for the appellant-petitioner was that he belong to Scheduled Tribe category, therefore, in absence of any other candidate being available from Scheduled Tribe category, irrespective of the fact that he had secured 50 marks or not, he should have been selected and appointed. In our considered opinion, the learned Single Judge rightly rejected that submission.

In view of the above discussion, this appeal fails and is hereby dismissed on all counts.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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